IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

NOTICE OF MOTION NO.1355 OF 2007
IN
SUIT NO.4162 OF 1994

Narang Overseas Pvt. Ltd. & Anr. ...Plaintiffs.
Vs.
Manohar alias Manu Shewaram
Narang & Ors. ...Defendants.

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Ms. K.S. Bharucha i/b. K.D. Abhichandani for the Plaintiffs.
Mr.Rajiv Narula with Mr. A. Das Gupta i/b. M/s. Jhangiani Narula Asso. for Defendant Nos.1 to 5.

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CORAM :DR.D.Y.CHANDRACHUD, J.
November 19, 2007.

P.C.:

This motion has been taken out for recalling the order dated 15th December 1999, passed by the Prothonotary & Senior Master for transferring the suit to the list of undefended suits; for condoning the delay on the part of Defendant Nos.1 to 5 in filing the Written Statements and for taking the Written Statements on record. The suit is for specific performance of family settlements dated 12th July 1990 and 30th January 1992. On 17th September 1997, an order was passed on a Notice of Motion taken out by the Plaintiffs. Thereafter,

on 24th November 1999, the suit appeared on Board before the Prothonotary & Senior Master for directions at which stage on the request of the Defendants, an adjournment of three weeks was granted to enable the Defendants to file their Written Statements. Once again on 15th December 1999, the matter came up before the Prothonotary & Senior Master and it has been stated that the erstwhile Advocate appearing on behalf of the Defendants inadvertently failed to appear in the proceedings. On 15th December 1999, the suit came to be transferred to the list of undefended suits. In the meantime, a Written Statement on behalf of Defendant Nos.1 to 4 was affirmed on 24th February 2000, while the Written Statement on behalf of Defendant No.5 was, in fact, affirmed on 4th February 2000. The originals of the Written Statements have been produced before the Court for perusal.

2. It has been stated that in March 2000, all the Defendants together decided to appoint one Advocate and accordingly, a no objection was taken from the Advocate for Defendant Nos.1 to 4 and the Advocate for Defendant No.5. The Vakalatnama bearing a no

objection of the Advocate of Defendant Nos.1 to 4 was sent to the office of Defendant No.1, but it remained with the First Defendant. The First Defendant died on 27th April 2001. In the meantime, there was a change in the Advocates. On 3rd September 2003, the suit was listed before the Learned Single Judge under the caption of 'undefended suit', but was removed from the Board as the Learned Single Judge was unable to take up the matter. Subsequently, the suit was listed on 4th March 2007 and it has been stated that at that stage, steps were taken by the present Advocate to contact the earlier Advocates for the Defendants, upon which the Vakalatnama of the Defendants has been transferred to the new Advocate.

3. On behalf of the Plaintiffs reliance has been placed on paragraph 22 of the affidavit of the Second Plaintiff and it has been submitted that the then Advocate for Defendant No.5 appears to be as an associate or partner of the present Advocates for the Defendants and that there was only a change of the nomenclature of the Advocates of the Defendants. This position has, however, been clarified in paragraph 10 of the affidavit in rejoinder in which it has

been stated that though it is true that the erstwhile Advocate of Defendant No.5 is an associate of the present Advocates for Defendant Nos.2 to 5, the Advocate for Defendant Nos.1 to 4 is neither an associate nor a partner of the present Advocates of Defendant Nos.2 to 5. In the circumstances, the allegation that there has been merely a change of nomenclature of the Advocates of the Defendants has been denied.

4. Having evaluated the facts and circumstances of the case, I am of the view that in the interests of justice, the Defendants ought to be given an opportunity to contest the suit by filing their Written Statements. The circumstances as set out in the affidavit in support, would demonstrate that there was no deliberate inaction or negligence on the part of the Defendants and that the Written Statements were duly affirmed, as noted earlier, on 24th February 2000 on behalf of Defendant Nos.1 to 4 and on 4th February 2000 on behalf of Defendant No.5. The Written Statements remained to be filed. The Plaintiffs can be adequately compensated by an order of costs. The suit, as already noted, is for specific performance of family

settlements.

5. In these circumstances, the Notice of Motion is made absolute in terms of prayer clauses (a) and (b) subject to the Defendants paying to the Plaintiffs costs quantified at Rs.15,000/- within a period of two weeks from today. The payment of costs shall be a condition precedent. The Notice of Motion is accordingly disposed of.

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